COURT NO.2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 68 of 2002

A.K. Singhal. ..... **Appellant**.

Versus

Sri Deepak Kumar
And others. ..... **Respondents.**

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicle Act, 1988, (in short the Act) against the judgment and Award dated 8-2-2002 passed in M.A.C.T. Petition No. 62 of 1999, A.K. Singhal vs Deepak Kumar and others, by Motor Accident Claims Tribunal/Special Judge, C.B.I./Anti Corruption, Dehradun (***in short the Tribunal***), whereby the learned Tribunal has allowed the claim petition and has awarded Rs. 2,90,000/- as compensation in favour of the claimant-appellant under Section 166 of the Act and against the O.P. No. 3/respondent no. 3 Aggrieved, the claimant-appellant has come up in appeal with a prayer that the compensation amount is inadequate on the ground that the learned Tribunal has failed to appreciate the evidence and the findings of the learned Tribunal are erroneous.

Brief of the case are that claimant-appellant has filed claim petition under Section 166 of the Act therefore the learned Tribunal for the injuries sustained by him in a motor accident on 13.12.1998 at 9.45 p.m. with the aggregations that on the said date claimant along with his wife was coming from Bareilly to Dehradun by his Maruti Care No. 34 A-5777 and was driving the vehicle in moderate speed. At about 9.45 p.m. when the claimant reached near main gate of Himalyan Colony, on Hardwar-Rishikesh

motor road, then a truck No. U.P. 12-4723 coming from the opposite direction of Raiwala and driven rashly and negligently by its driver dashed his Maruti Car with the result the claimant and his wife sustained grievous injuries and both of them became unconscious. They were brought to Government Hospital Rishikesh the same day and were admitted there. Subsequently, the claimant was shifted to Jain Hospital Dehradun, Race Cource, Dehradun, where the claimant remained admitted till 17.12.1998 but finding his condition serious, he was brought to Apolo Hospital, Delhi. Subsequently, he was given treatment at Deepak Memorial Hospital, Vikas Marg, Extension Delhiand thereafter, he was treated by Dr.V.K. Nautiyal and Dr. Mahesh Kutiyal of Dehradun. Thus, in all, the claimant has incurred Rs. 2,15,000/- in his treatment and amount of Rs. One Lakh towards his messing, lodging etc. It is also alleged that the claimant shall have to incur expenses for future treatment. Other pleas regarding deformity in the face etc. were also taken and it has been alleged that his right hand has become weak. It has also been alleged that the claimant was working as Assistant Commissioner in Trade Tax Department and was getting salary worth Rs. 16,000/-. The claimant has filed claim petition for compensation worth Rs. 13,65,000/-

Both the Opposite Party/Respondent Nos. 1 and 2 have not contested the claim petition. Only the Opposite Party No. 3-New India Assurance Company has contested the claim petition by filing its written statement. It has denied the allegations made in the petition and has pleaded that the amount of compensation claimed is highly exaggerated and without any basis. However, the date, time and involvement of truck in question including its insurance have been admitted by the Insurance Company. It has been also pleaded that the accident in question was result of own negligence and rashness in the driving by the claimant himself. It has also been pleaded that the claimant and driver of the truck were not holding a valid driving licence on the date of accident.

On the pleadings of the parties, the learned Tribunal framed two Issues in the case. Issue No. 1 related to rash and negligent driving by the driver of the truck involve in the accident resulting into grievous injuries to the claimant. Issue No. 2 related to relief. The claimant has filed documentary evidence as well as has adduced oral evidence in support of his case. The learned Tribunal, after hearing both the parties, and considering the evidence on record, found on Issue No. 1 that the claimant has succeeded in proving that he sustained injuries in the motor accident due to rash and negligent driving by the driver of Truck No. U.P. 12-4723 and accordingly decided Issue No. 1 in favour of the claimant-appellant. On Issue No. 2, the learned Tribunal took up the point of validity of driving licence of the driver of the truck as alleged by the Insurance Company; but evident to the contrary has been filed before the learned Tribunal. Tribunal has also found that the papers relating to offending vehicle were taken in custody by the police, as has been testified on oath by the witness P.W. 4 S.I. Satpal Singh. Accordingly, it has been held that the truck in question was duly insured at the time of accident with the Insurance Company. From the documentary evidence on record, the Tribunal was satisfied that the claimant-appellant had insured expenditure worth Rs. 1,89,912/- and rounded up the same as Rs. 1,90,000/- towards his treatment. It was also of the view that due to injuries, the claimant has sustained physical and mental pain. After considering all the aspects of the case, the Tribunal has held that in addition to the aforesaid amount, the claimant is entitled to get Rs. 1,00,000/- towards general damages. Ultimately, total compensation worth Rs. 2,90,000/- along with interest @ 9 % per annum from the date of claim petition, i.e. 12.4.99 till payment, has been awarded in favour of the claimant-appellant.

We have heard learned counsel for the appellant Mr. Ramji Srivastava and have carefully scrutinized the entire material before us as well as the impugned judgment and award.

It has been submitted by the learned counsel for the claimant-appellant that the compensation awarded is not sufficient and is inadequate and the learned counsel has made a prayer for enhancement of compensation amount. We have perused the entire record and in our opinion, the learned Tribunal has elaborately discussed the entire documentary and oral evidence before arriving at its conclusions. From the evidence on record, it has not been proved at all that the claimant-appellant ahs become permanent disabled. On record, expenditure worth Rs. 1,90,000/- towards medical treatment has been proved by the claimant. We also find that amount of Rs. 1,00,000/- has been rightly awarded towards general damages by the learned Tribunal.

Having considered the facts and circumstances of the case, we are of the opinion that the compensation amount of Rs. 2,90,000/- along with simple interest @ 9% per annum, as awarded by the learned Tribunal, is just and proper compensation. Nothing has been shown to us on behalf of the claimant-appellant, so as warrant any interference with the findings of the learned Tribunal on any count, especially when no permanent disability to any extent has been established in the present case. No illegality or infirmity has been committed by the learned Tribunal. Accordingly, the appeal is devoid of merit and is liable to be dismissed.

The appeal is dismissed. The judgment and award, under appeal, is upheld. No order as to costs.

19-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**

RCP